The 85-15 Rule and Related GI Bill Safeguards

1944 GI Bill Led to Predatory School Abuses

The original GI Bill, the Servicemen's Readjustment Act, was signed into law in 1944.[1] Its enactment led to explosive growth in the number of for-profit trade schools, many created exclusively to enroll veterans. According to *The Cycle of Scandal at For-Profit Colleges*, a series on for-profit school abuses since creation of the GI Bill, some of these institutions offered shoddy training at inflated costs to take advantage of the maximum amount covered by the GI Bill.[2] To address program vulnerabilities involving for-profit institutions, Congress introduced a number of safeguards.

- *1946*. Standards were established for on-the-job training, which was placed under the purview of State Approving Agencies (SAAs).[3]
- *1949*. Congress prohibited the use of GI Bill funds for avocational and recreational courses in fields such as bartending, dance, photography, music, and sports.[4]
- *1950*. For-profit vocational schools in existence for less than 1 year were not allowed to enroll veterans and a federal benchmark was set for the allowable customary costs of attendance to assure sound training at a reasonable price by seasoned institutions.[5]

In 1950, following a critical assessment by the Veterans Administration (VA) of for-profit schools and a call to action by President Truman, Congress established the *House Select Committee to Investigate Educational Training and Loan Guarantee Programs Under the GI Bill.*[6] The so-called Teague Committee, named after its Chairman, Representative Olin Teague, was tasked with examining the abuses that plagued the WWII benefit program.

The Select Committee found that "proprietary profit schools below the college level" had falsified cost data and attendance records; overcharged for books and supplies; and billed for students not enrolled, findings that were reaffirmed by the 1956 Bradley Commission report. The Select Committee concluded that:

> "Many schools have offered courses in fields where little or no employment opportunity existed. Certain trades and vocational fields such as tailoring, automobile mechanics, and cabinetmaking have been seriously overcrowded by trade schools. Criminal practices have been widespread among this class of schools. Convictions have been obtained in approximately 50 school cases. Approximately 90 cases are pending and millions of dollars in overpayments have been recovered. Many new cases are developing."

In contrast to non-college degree programs offered by trade schools, the Teague Committee found that "The veterans' training programs at the college level, although experiencing some administrative difficulties, have been carried out successfully. Participating colleges and universities have rendered outstanding service in training veterans under many adverse conditions."

Teague Committee Recommends 85-15 Rule

In authorizing educational benefits for Korean War veterans in 1952, Congress adopted a modified version of the 85-15 rule recommended by the Teague Committee. As enacted, the rule:

- conditioned a course's eligibility to enroll veterans on its ability to attract at least 15% non-veteran students who could pay for tuition out of their own pocket or through a combination of private scholarships and employer subsidies; [7] and
- was applicable to any *nonaccredited* course below the college level offered by a *proprietary profit* or *nonprofit* educational institution.[8]

In addition, requirements were established for courses to achieve accreditation.[9]

The 85-15 requirement had real teeth because (1) veterans' educational benefit programs were then the only large pool of federal funds available to students—the federal student aid program had not yet been authorized; and (2) few for-profit schools were accredited at that time.

In commenting on the rationale for the rule in 1976, the Senate Veterans Affairs Committee noted the rule's market-based rationale.

Market-Based Rationale for 85-15 Rule

> "The price of the course was also required to respond to the general demands of the open market as well as to those with available Federal moneys to spend. A minimal number of nonveterans were required to find the course worthwhile and valuable or the payment of Federal funds to veterans who enrolled would not be authorized."

Source: S. Rep. 94-1243, p. 88 (1976).

The 1952 legislation enacted two other noteworthy protections. First, any course eligible to enroll veterans had to have been in operation for a minimum of 2 years

before it could be approved for GI Bill educational benefits.[10] Courses offered by public institutions were exempt from the 2-year rule.[11] The objective was to discourage the creation of courses aimed primarily at recruiting veterans that proliferated after the enactment of the original GI Bill and to ensure that courses were able to demonstrate a successful track record before they could enroll veterans.

Second, the Teague Committee had found that direct payments to educational institutions had led to abuses.[12] For example, schools set tuition at the maximum amount the benefit would pay and some veterans enrolled not to prepare for a career but just to receive the separate living stipend. To combat these abuses, Korean War GI Bill benefits were disbursed directly to veterans who now were responsible for paying their own tuition and fees. In addition, the lump sum payment did not include a living stipend, which incentivized veterans to attend lower cost schools. According to *The Cycle of Scandal*, these changes curtailed the expansion of the for-profit sector "almost overnight."[13] The report cites a 1972 floor statement by Senator Strom Thurmond to an advocate of restoring direct payments to schools: "That was tried…in 1944, and it was on the books until 1951, and there were so many abuses that it had to be changed to the present system of just allotting so much for a student."

Changes in Higher Education Landscape Threatened to Undercut 85-15 Rule

The availability of new sources of federal educational funds threatened to undercut the relevance of the 85-15 rule by making it easy for for-profit schools to recruit non-veteran students.

By 1965, Congress had created additional sources of federal funds for postsecondary education, including: (1) the 1958 National Defense Student Loan Program; and, more importantly, (2) the 1965 federal student aid program, Title IV of the HEA. The 1965 Act expanded federal student loans and created grants that were administered by schools for qualifying low-income students.[14]

Although the HEA prohibited for-profit schools from participating in Title IV programs, Congress created a separate, National Vocational Student Loan Insurance Program with a limited appropriation for training that led to "gainful employment." This program was merged with Title IV in 1968 while retaining the requirement that the training lead to gainful employment.[15] It was not until 1972, however, that for-profit schools also gained access to federal grant programs, which were expanded in that year to include grants provided directly by the federal government to qualifying low-income students.[16] At the same time, for-profit schools were expanding into the college degree market, placing them in direct competition with public and nonprofit institutions.

As noted by *The Cycle of Scandal,* this large, new stream of federal funds "created the 'perfect' storm for profit making shenanigans," as evidenced in for-profit school abuses that had emerged by the mid-1970's.[17] The availability of federal student aid also shifted the recruiting focus of predatory schools from veterans to low-income Americans.

Amendments Strengthen and Weaken the 85-15 Rule

Over time, the 85-15 rule was amended several times, both strengthening and weakening its requirements.

- 1974. The rule was applied to *accredited,* in addition to nonaccredited, non-college degree programs at for-profit and nonprofits schools.[18] By the 1970's, many non-college degree programs had obtained accreditation, leaving the Senate Veterans Affairs Committee to conclude that "whatever reasons there originally may have been to limit the rule to nonaccredited schools, those reasons were no longer applicable."[19]
- 1976. Programs at degree-granting institutions—for-profit, nonprofit, and public—were included in the rule and the applicability of the rule was extended to branches of institutions that were located beyond the normal commuting distance of the main campus.[20] The Senate Committee report accompanying the bill noted that the Veterans' Administration (1) had found "increased recruiting by certain accredited institutions directed exclusively at veterans," and (2) believed that "if an institution of higher learning cannot attract sufficient nonveteran and nonsubsidized students to its programs, it presents a great potential for abuse of our GI educational programs."

  The Committee stated that it shared this concern and "believes it is important, when mandating GI Bill expenditures of great magnitude, to limit those situations in which substantial abuse could occur." It also noted that the 85-15 requirement is not onerous because "unlike the WWII program, veterans do not comprise a major portion of those attending institutions of higher learning…."[21]

  In addition, the rule was amended to require the inclusion of all students receiving institutional and federal government grants when calculating a courses' compliance with the 85-15 rule. Although the rule in its current form (2019) requires the inclusion of students

receiving grants directly from schools, the requirement to also include those in receipt of federal government grants was never implemented. The exclusion of federal grants made it easier for schools to evade the rule's market-based test by recruiting non-veterans who received such aid.[22]

- 1977. Following VA's lead, Congress added a requirement that exempted schools from reporting veteran/non-veteran student ratios for courses if veterans accounted for 35% or less of the overall student body.[23] Courses with veteran enrollment that exceeded the 85% threshold would not be exempt from the rule, but regional office staff or SAAs would have to rely on "forceful action" to identify those courses.

  In effect, this statutory change codified VA policy.[24] In exercising its waiver authority, the VA had exempted courses where veterans comprised less than 35% of the student body—a response to opposition to the reporting of computations by public and nonprofit sector institutions where veterans were a small percentage of all students. According to VA, its use of this blanket waiver authority meant that "at least 95% of the schools in the United States will…not have to make an individual computation."

  In addition, VA was authorized to waive the 1952 requirement that courses had to have been offered for 2 years before schools were allowed to enroll veterans with GI Bill benefits.[25]

- In 1996, the 2-year rule enacted in 1952 was amended by requiring for-profit and nonprofit institutions offering non-college degree courses to have been in operation for a minimum of 2 years (as opposed to *courses having been offered for 2-years)*.[26]

Supreme Court Upholds Constitutionality of 85-15 Rule

In a 1978 decision, *Cleland v. National College of Business*, the U.S. Supreme Court overturned a decision by the U.S. District Court of South Dakota that had found the 85-15 requirement and the 2-year rule to be unconstitutional.

The appellee, the National College of Business, was a for-profit school operating extension programs in several states. Most of its courses had veteran enrollment of 85% or more. The appellee contended that "the restrictions arbitrarily denied otherwise eligible veterans of educational benefits and denied veterans' equal protection because they [the protections] were not made applicable to persons whose educations were being subsidized under other educational assistance programs."[27]

The Supreme Court's decision noted that both the 85-15 rule and the 2-year requirement were intended to preclude the abuses experienced during the implementation of the original GI Bill, which had witnessed the creation of schools and courses aimed almost exclusively at veterans eligible for GI Bill payments. The 1952 safeguards, which the Court acknowledged had changed over time, were "intended by Congress to allow the free market mechanism to operate and weed out those institutions [which] could survive only by the heavy influx of Federal payments."[28]

Supreme Court Upholds Constitutionality of 85-15 Rule

> "As the legislative history demonstrates, the 85-15 requirement and the 2-year rule are valid exercises of Congress' power. Experience with administration of the veterans' educational assistance program since World War II revealed a need for legislation that would minimize the risk that veterans' benefits would be wasted on educational programs of little value. It was not irrational for Congress to conclude that restricting benefits to established courses that have attracted a substantial number of students whose educations are not being subsidized would be useful to accomplishing this objective and 'prevent charlatans from grabbing the veteran's education money.'"

Source: *Cleland v. National College of Business*, March 20, 1978.

In responding to the appellee's contention that the rule denied veterans' equal protection, the Court found that: "The otherwise reasonable restrictions are not made irrational by virtue of their absence from other federal educational assistance programs." Thus, it concluded that "When tested by their rationality, therefore, the 85-15 requirement and the 2-year rule are plainly proper exercises of Congress' authority." In short, "The District Court's error was not its recognition of the importance of veterans' benefits but its failure to give appropriate deference to Congress' judgment as to how best to combat abuses that had arisen in the administration of those benefits."

85-15 Rule Served as Model for Title IV Protections

Lawmakers' concerns about GI Bill abuses at for-profit schools broadened in the 1980s and 1990s to encompass abuses of Title IV federal student aid.

By the early 1990s, student loan default rates at for-profit schools were 41%, compared to an overall rate of 22%.[29] Moreover, students were often leaving for-profit schools with poor skills and employment prospects and burdened with student loan debt.

In 1992, Congress established an analogous 85-15 rule for federal student aid based on revenue rather than enrollment—that is, no more than 85% of a for-profit school's revenue could come from Title IV funds.[30] In 1998, the ratio was changed to 90/10 and subsequent modifications by the Higher Education Opportunity Act of 2008 further weakened the rule's impact. Under the 2008 law, a school that exceeded the 90% Title IV dependency cap had to do so for 2 consecutive years to lose access to federal student aid—a change from the immediate cutoff policy of the past. Moreover, schools manipulate their facility codes to avoid exceeding the cap.

Taxpayer-funded VA and Defense Department educational benefits were not explicitly included in the 90% cap, creating a loophole that led for-profit schools to more aggressively target GI Bill beneficiaries, particularly after the implementation of the new, more generous Post-9/11 GI Bill in 2009.

Enforcing the VA 85-15 Rule and Detecting Violations

To enforce the rule, VA relies on (1) self-reporting by the small minority of schools that are required to submit 85-15 calculations, and (2) oversight by SAAs.

Using 2017 data from the GI Bill Comparison Tool, we estimate that only 2.8% of schools—178 of 6,117—exceeded the 35% threshold and should be submitting periodic enrollment reports to VA. About three quarters of those 178 institutions are for-profit schools. Although our estimate excludes schools for which the Comparison Tool lacked overall student enrollment data, only 5% of beneficiaries were enrolled at these 2,458 schools.

Even if all but about 3% of schools are exempt from submitting periodic enrollment reports to VA, all schools must comply with the rule, and SAAs may require schools to calculate ratios for courses that enroll beneficiaries during compliance surveys.[31] According to the National Association of State Approving Agencies (NASAA), however, relatively few schools undergo a compliance survey each year—about 15%.

By statute, VA, not SAAs, is responsible for enforcement once a school is determined to be out of compliance.[32] For example, an SAA would notify VA of any courses that exceed the 85% beneficiary threshold, but the VA is responsible for informing the school that it must suspend new GI Bill enrollment and for determining when courses can resume enrollment.[33] In 2014, VA relied on data from the University of Phoenix to overturn findings by the California SAA that courses at the school's San Diego campus exceeded the 85% cap on GI Bill beneficiary enrollment.[34]

Little public data is available on the extent of course suspensions for exceeding the enrollment cap. Interviews with several officials representing SAAs and NASAA highlighted that school self-reporting under the 85-15 rule is rarely verified.

- During compliance surveys, SAAs can ask schools to fill out forms showing the proportion of veterans and non-veterans enrolled in each course. However, SAA verification of the calculations requires either showing up at a class or obtaining a course roster that lists the names and contact information of both veteran and non-veteran students. Such verification is a time-consuming task that an SAA is unlikely to undertake, unless it has reason to believe that the data has been falsified.
- VA rarely attempts to verify self-reported calculations submitted by schools and would face the same challenges in doing so that SAAs experience.
- Schools may decide to report minor violations to avoid broader scrutiny. In an example cited by an SAA, beneficiary enrollment in all of the courses at a school were above the cap, but the school selectively reported just a few courses as out of compliance.
- Because many schools are exempt from submitting periodic 85-15 calculations, some believe that they are also exempt from the rule and can continue to enroll new GI Bill beneficiaries even when more than 85% of students in a course are veterans or eligible family members. Of special concern are courses that target beneficiaries and are offered by the school through a contract with another entity.

According to the SAA and NASAA officials we interviewed, the 85-15 rule was essentially ignored until about 2015 when a scandal erupted over for-profit helicopter flight training schools that contracted with public-sector institutions offering aviation programs. Because the flight training was provided under contract, the cost was exempt from the expenditure caps on GI Bill educational benefits. VA paid hundreds of thousands of dollars for each beneficiary to learn how to fly rotary wing aircraft. Moreover, VA allowed schools to skirt the 85% cap on veteran enrollment by allowing them to count non-veterans enrolled in "aviation" programs that did not require flight training, such as airport management.

The use of contractors to skirt the 85-15 rule was cited in a 1976 Senate Report describing the rationale for amendments to the Vietnam-era GI Bill.[35]

Excerpt from 1976 Senate Report

> "In recent months, a number of instances have been brought to our attention which represent abuse of our educational programs. Some of these cases involved

contracting between non-profit schools and profit schools or organizations whereby courses designed by the latter are offered by the non-profit, accredited school on a semester- or quarter-hour basis. In others, there are arrangements between non-profit, accredited schools and outside profit firms whereby the latter, for a percentage of the tuition payment, perform recruiting services primarily for the establishing of these branch locations for the school. These recruiting efforts are aimed almost exclusively at veterans."

More recently, the use of for-profit, online program managers by nonprofit colleges is reviving the same concerns that were raised about 3rd party contractors in the 1976 Senate Report.[36]

Conclusions

As noted in the 1977 Senate floor debate on amendments to the GI Bill, Congress must exercise some control in the operation of any federal benefits program, especially one as generous as the GI Bill, in order to assure the expenditures of funds are made only in the interest of eligible persons and taxpayers.[37]

The 1977 debate cited the conclusions of a paper published by the National Institute of Education, which are still applicable more than 40 years later:

"In the current recurrent education system in America, accountability is built-in due to the fact that the individual purchasers of service will stop purchasing those services if the services do not meet their needs, since they are spending their own funds. However, when the public subsidy enters the picture, the problem of accountability becomes more subtle and more complex. An individual spending his or her educational entitlement feels less directly, and in less personal terms, the fact that value purchase may be less than expected. Hence, if public funds are to be invested wisely in recurrent educational entitlement, then entitlement designs must be carefully evaluated in terms of the accountability they provide."[38]

Source: George Nolfi, "Comparative Policy and Program Analyses of Alternative Proposals for Federal Programs of Educational Entitlement," published in *Education and Work* by the National Institute of Education.

The modifications to the 85-15 rule could not have anticipated the business decisions of publicly-traded chains to convert from for-profit to nonprofit status, a trend that has been dubbed the "covert for-profit." In hindsight, however, it is fortuitous that the rule was modified in 1976 to cover all degree granting institutions.

Recommendations

Congress should consider requiring:

- schools to periodically submit 85-15 calculations if they offer approved courses in conjunction with a 3rd party contractor.
- increased SAA verification of schools' self-reported data.
- VA to report on the feasibility of creating a computer algorithm that checks a school's self-reported enrollment against its own and Department of Education enrollment data.

Special thanks to David Whitman, author of *The Cycle of Scandal at For-Profit Colleges,* for sharing key, post 1952 documents related to statutory changes to the 85-15 rule. In a forthcoming book, he analyzes the history of the federal regulation of for-profit schools.

[1]P.L. 78-346.
[2] The five-part series by David Whitman began with the publication of "Truman, Eisenhower, and the First GI Bill Scandal" on January 24, 2017, and ended with "The GOP Reversal on For-Profit Colleges in the George W. Bush Era" on June 7, 2018. See also, Suzanne Mettler, *Degrees of Inequality: How the Politics of Higher Education Sabotaged the American Dream,* New York: Basic Books, 2014.
[3]P.L. 78-346. See p. 289. SAAs were created in 1944 to approve schools' participation in VA funded education and training programs. SAAs are the gatekeepers for GI Bill benefits and work under contract with the VA.
[4]P.L. 80-862, see p. 1201 of hyperlink.
[5]P.L. 81-266, see p. 653 of hyperlink.
[6]The Veterans Administration become a cabinet level department in 1989.
[7]The Teague Committee had recommended a higher threshold ("at least 25 percent") for non-veteran students.
[8]P.L. 82-550, §226, which established the 85-15 rule, stated that it applied to "proprietary profit or proprietary nonprofit educational institution[s]." The use of the adjective "proprietary," which connotes a profit-making entity, was likely an inadvertent error. In fact, a 1974 Senate Report, which extended the 85% cap to accredited as well as nonaccredited courses, intimated that there had been an error by saying the new requirement applied to "proprietary-for-profit and not-for-profit institutions." And, as noted in footnote

9, the Teague Committee had recommended application of the rule to "private schools," which would include both for-profit and nonprofit institutions.

[9]Accreditation requirements were spelled out in §253 and §254 of P.L. 82-550, which required the Office of Education, the precursor to the U.S. Department of Education, to publish a list of recognized accrediting agencies. In addition, nonaccredited courses could be approved by submitting an application and supporting documentation to SAAs; schools had to demonstrate compliance with more than a dozen criteria, including that the courses be similar in quality, content, and length to comparable courses offered by institutions with "recognized, accepted standards."

[10]The Teague Committee had recommended that courses at private schools be successfully operational for 1 year.

[11]P.L. 82-550, §227.

[12]See p. 43 of hyperlink.

[13]See p. 5 or hyperlink.

[14]See P.L. 89-329, Title IV, which begins at p. 1232 of this hyperlink. The HEA also integrated the existing National Defense Student Loan Program.

[15]Gainful employment remained undefined until the establishment of the Gainful Employment Rule in 2014 which establish debt-to-earnings ratios to measure compliance with the requirement.

[16]See p. 55-56 of this hyperlink.

[17]See p. 2 and pp. 5-8 of this hyperlink.

[18]P.L. 93-508, § 203.

[19]See our Issue Brief #10 for an assessment of the impact of another 1974 statutory requirement, which bans schools from enrolling GI Bill beneficiaries if they engage in deceptive advertising and recruiting.

[20]P.L. 94-502. §205(4)(d), amending §1673(d.). The Senate Report on the bill cited the "spectacular" rise in both the number of institutions establishing branch campuses and in the number of veterans enrolling at these extensions. It noted that these institutions were entering into "extensive recruiting contracts directed almost exclusively at veterans." See p. 129 of this hyperlink.

[21]Compared to 1947, when almost 47% of student attending institutions of higher learning were veterans, only an estimated 11.5% were veterans by 1976.

[22]The requirement to include students receiving federal grant aid in determining compliance with 85-15 is no longer found in §3680A of Title 38, which governs the disapproval of enrollment. Sec. 305(a) of the GI Bill Improvements Act of 1977 (P.L. 95-202) required the exclusion of institutional and federal grants from the calculations until the VA had completed a study regarding the need for and feasibility of including them within the 85% computation. Presumably, VA concluded the requirement to include federal grant aid was either not needed or was not feasible.

[23]P.L. 95-202, §305(a).

[24]See pp. 34353-4 of this hyperlink.

[25]During Senate floor debate on P.L. 95-202, §305(a), the waiver was justified as providing Vietnam-era veterans, who experienced high unemployment rates, with immediate access to training in an emerging field, such as the growing field of energy conservation. See p. 34352 of this hyperlink. The floor debate also noted that VA could apply the waiver to courses offered at branch campuses or extensions but should be used cautiously because of criticism that some courses were being contracted out by the parent campus and lacked any involvement or control by the institutions' own faculty or administrators.

[26]P.L 104-275, §103(b).

[27]Other District Courts had upheld the challenged restrictions. See fn. 4 of this hyperlink.

[28]In upholding the constitutionality of the 85-15 rule, the Supreme Court acknowledged recent changes to the rule (summarized in this Issue Brief), including its application to (1) *accredited* schools (1974), and (2) programs offering standard college degrees (1976).

[29]See p. 7 of hyperlinked CRS report.

[30]P.L. 102-325, §481(b).

[31]Compliance surveys are essentially audits of GI Bill payments to participating schools.

[32]See § 3680(d).

[33]Payments for beneficiaries already enrolled are not affected if a course exceeds the 85% threshold.

[34]See p. 5 of this hyperlinked report.

[35]See p. 129 of hyperlinked Senate Report.

[36]See Kevin Carey, "The Creeping Capitalist Takeover of Higher Education," The Huffington Post, April 1, 2019.

[37]See p. 34354 of hyperlinked document.

[38]See p. 34354 of this hyperlink.